

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5454**

1. Opening of Meeting:

The Appeals Board convened at 10:30 a.m., March 9, 2005 in Sacramento, with Chair Cynthia K. Thornton presiding.

2. Roll Call: Members

Present

Absent

Cynthia K. Thornton, Chair

X

Ann Richardson, Vice Chair

X

Virginia Strom-Martin

X

Jack Cox

X

Don L. Novey

X

3. Approval of the Minutes:

The February Board meeting minutes were approved by all members.

4. Chair's Report:

Chair Thornton reported she and Chief ALJ/Executive Director Jay Arcellana visited both the San Jose and Oxnard offices during the past month and provided updates on matters affecting the CUIAB. Field office staff has frequently expressed its appreciation for these informational visits, commenting that the management of most other State agencies do not make this kind of effort to stay in touch with rank and file employees.

Chair Thornton also reported the following from the Labor Agency meeting she attended yesterday: The Governor's CPR plan, relating to boards and commissions, will be withdrawn. However, Victoria Bradshaw, Labor Agency Secretary, announced revisions will be made and the plan resubmitted on a piecemeal basis, agency by agency. The Secretary said she was not certain when this would be done or if it would be done this legislative year. The Secretary was not sure if the EBAB (Employment and Benefits Appeals Board) would be part of the revised plan. The one other item of note from the meeting is that the Labor Agency is preparing new budget procedures that will require justification for each item of spending. The approach is, in essence, to ask what the tax payers of the State of California will receive in return for the proposed expenditures. Chief ALJ/Executive Director Jay Arcellana has already spoken with our budget staff in anticipation of implementing the new procedures.

5. Board Member Reports:

Member Don Novey commented this is reminiscent of the Wilson administration's approach to budget matters. As long as you run your agency properly, and the staff does its job, everything will work out. This approach doesn't really achieve anything different in the end.

Vice Chair Richardson inquired about our advance planning. Chief ALJ/Executive Director Jay Arcellana replied we plan everything on three year cycles, so we are planning way out in front of the curve.

6. Chief Administrative Law Judge/Executive Director's Report:

Chief ALJ/Executive Director Jay Arcellana announced that Martin Aguilar, PALJ of the Sacramento office, is retiring effective April 15. PALJ Aguilar started with the Board in 1980. In 1985 he worked as Senior Appellate Chief Administrative Law Judge, and later moved to the Sacramento Office of Appeals.

Our budget staff met with EDD this past week to talk about allocation codes. Currently CUIAB uses 21 allocation codes, which places a significant workload burden on staff. As a result of this meeting we have been able to agree to just two codes, one for training and meetings, and the other for all remaining activities. This is another example of the benefits of a good working relationship between our budget staffs.

EDD has requested, through our Chief Counsel, information on the kind of issues appealed, with numbers and percentages on win/loss by party. We do not have such information readily available through the automated system. We don't know why they are asking for this information, but it may be budget related.

7. Branch Reports:

a. Chief ALJ/Executive Director Jay Arcellana reported Steve Angelides, the PALJ in Oakland, will be chairing the annual Judicial Conference this year. In order to do so he is taking a leave of assignment from his current position, and ALJ Amy Oppenheimer will be acting PALJ in Oakland. Nancy O'Brien, a PALJ out of San Francisco who manages the DI workload, has announced she will be retiring this summer. We are going to move Gil Knipe, currently the Inglewood PALJ, into her position, and advertising to fill behind him. In addition, Marcus Gunkel, PALJ in the San Jose office, will be reassigned to managing the large tax cases and the dollars that go along with them. So we will also be advertising to fill the PALJ position in San Jose. All of these changes are lateral movements, not promotions, and are being made in order to strengthen the organization. Of the current PALJ's approximately nine have indicated they will be retiring within the next two to three years, so we need to start preparing now for the changes those retirements will compel.

On Monday we will be conducting a one day PALJ meeting in Oakland. Tim has scheduled two one-day support staff supervisors meetings next week. This coming week there will be an important budget advisory committee meeting where decisions will be made about what we are going to do with our spending from here through the end of the fiscal year. It's important because we need to make certain that as we progress through the end of this fiscal year, knowing that when the May revision comes out we will probably lose some funding and positions, that we don't over budget ourselves.

Chief ALJ/Executive Director Arcellana gave a power point presentation on the field operations work load. (Attachment A) Chief ALJ/Executive Director Arcellana commended the San Diego P&PM staff and the Sacramento staff on preparing this presentation on such short notice. Chief ALJ/Executive Director Arcellana explained the process of producing these reports and then reported on the workload. In January CUIAB verified 17,000 cases, and in February 16,000. That's a drop of 8%. But to put it in perspective, this is the lowest the verifications have been since 2001, when the economy was doing well. Since we decided more cases in January and February than we registered, we are way ahead of the balance in our inventory right now -- the open balance is down by 10%. For February we have 32,000 cases, which is about three weeks of inventory, about where it should be. For unemployment insurance, verifications are down 9% from the previous month, at 14,000 verifications. That is the lowest since June 2001. For January and February of this year, we verified 43% fewer case than the same two month period of 2004. In terms of dispositions, even though we are way ahead of verifications, the dispositions dropped by just 3%. That's critical, because as I mentioned dispositions generate income. So as the dispositions drop, the money coming in drops correspondingly as well. UI is 89% of our budget. The open balance of UI cases is down 12%. For disability insurance we are seeing the same thing. Basically 177 less cases registered from January to February, a reduction of 10%. These trends pretty much mirror the unemployment insurance trend. If we were to look at the same time period a year ago, we are talking about a reduction in the work load by 17%. Dispositions, as you can see, are down but we have held steady there. Open balance is down by 20%, so disability insurance has dropped off considerably as well. In the tax area we have significantly increased our efforts, with tax case decisions increasing by 75 cases, which is positive. The open balance is down 58%. Tax cases are different in that they take a long time to hear and decide, and there is significantly more money involved, which why we reassigned one of our presiding judges to take care of these cases. The average case age of all cases in the agency is 33 days. That means that pretty much every person is getting his or her decision within 33 days of registration which is remarkable. Cases older than 90 days are just 3 percent for UI and 6 percent for DI. I don't believe we have ever been this current as long as I have been with the agency. The good side is that it does permit us to take judges off calendar to give them training and to keep them up to speed on current issues. It also gives us the opportunity to fulfill our commitment to the judges. Since they volunteered to hear more cases, we have been able to reduce their case loads, and we may reduce them again. If we do so that it will be the lowest case load assignments the agency

has had since I have been here with the agency in the Field Operations. In terms of the support staff, we believe they need to take a break and get current on things.

b. Deputy Chief Administrative Law Judge Appellate Operations, Julie Krebs reported in February we registered 1280 cases. We closed 1451 cases. So just as the trend goes in Field Operations, so the trend goes in Appellate Operations. We have reduced our inventory significantly from its overload of last year. Our balance of cases is at 2424 however if you take out the grocers' strikes from those cases, then we have about 2250 cases. I am happy to report that our inventory reduction plan has been successful. We are now at a point in appellate operations that we can reduce the case load of the AO ALJ's so they will be back to their normal case load. I am happy to announce that we will reduce their case load effective Monday, March 14. It will be at the normal level which is 20 appellants per week for ALJ Is and 22 appellants per week for ALJ IIs.

Deputy Chief Krebs also reported oral argument is still on schedule for next month. The Board ALJ has been working on the briefing of that case. The board members will receive the brief no later than April 1, but will probably receive it sooner than that. As far as the grocers' strike, the Vons matter has been assigned and has gone to the Board panel. We have also received the Albertsons and Ralph's cases. The panel should be seeing these cases within the weeks to come.

c. Deputy Director Administrative Services Branch Pam Boston reported the personnel office will be conducting a survey to identify our current representation of persons with disabilities. A memo will be going out this week asking employees to complete a voluntary questionnaire. The questionnaire is strictly confidential and will only be used for statistical reports and actually employees send it directly to the State Personnel Board themselves. We don't even get involved in the data. Our current representation is 10.3% and the statewide representation is 7.5%. We have also conducted the ALJ II written exam and we are hoping the results will be out by the end of the month. IT will be losing Sharen Petersen who has been with the agency for probably 13 plus years. She is going over to the Teale Data Center and her last day will be the end of the month.

d. Chief ALJ/Executive Director Jay Arcellana reported on P&PM for Deputy Director Mary Walton-Simons. The Strategic Planning Division has developed a new site on the Bench that will brief staff on the status of planning meetings. P&PM is also developing conference workshops in the event the Statewide conference is approved they will be ready to go with it. If the conference is denied then they will retool and they plan on doing as much as possible by polycom to get that out because it is important to train the staff. They have got workshops on registration, calendaring, public contact which is important at the reception point, automated time reporting, upward mobility. We are getting into more employee orientation activity. They will be given software training, PC liaison training, there will also be three workshops for our supervisors. P&PM registered 202 Board Appeals last month for the Ralph's trade dispute. P&PM is also analyzing a CHP facility assessment report

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton reported the board workload remains consistently high although it is a little bit lower than last month. (Attachment B) On the litigation front, three new court cases were filed. (Attachment C) As to existing court cases, we still have an ongoing battle with regard to an issue on status cases. The issue arises where an individual has filed a claim, and the entity takes the position that he/she was an independent contractor. EDD makes the determination that, no, that person who performed the work for the particular entity is in fact an employee. We have three cases going on right now where the entity is trying to challenge that particular determination in court before paying any tax assessment, which is contrary to the provisions of both the constitution and the anti-injunction statutes. It's an ongoing issue in which we are trying to establish a precedent. We don't have a published decision yet, but we have been affirmed so far at the trial court level in all three cases. I expect that one of those will eventually get to the court of appeal.

And speaking of court of appeal, we do have one case in which we received an unpublished decision from the court of appeal. I have previously discussed this case, in which the employee alleged that he quit work as a courier because he was not being reimbursed at a proper level for the use of his car. The couriers had to use their own cars and he was being reimbursed at .19 per mile. His position was he should have been reimbursed at a higher rate pursuant to a labor code provision that states employers are to reimburse employees for the actual costs they incur on behalf of their employer in performing their job. This is the issue I took to Agency because I was concerned a published decision would establish a precedent unfavorable to the employer community, to the effect that employees must be reimbursed at the federal mileage rate of .34 per mile, pursuant to a Department of Industrial Relations advice letter along those lines, not to mention other employee-incurred expenses.

9. Unfinished & New Business:

There was no unfinished and new business.

10. Public Comment:

There was no public comment.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board went into closed session. No votes were taken on any matters in closed session.